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Security Council

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Third report of the Secretary-General pursuant to paragraph 3 of resolution 1905 (2009)

I. Introduction

1. The present report is submitted pursuant to paragraph 3 of Security Council resolution 1905 (2009), in which the Council requested me to provide written reports to the Council on a quarterly basis, to include details on progress made in strengthening financial and administrative oversight of the current Development Fund for Iraq, as well as details on the legal issues and options to be considered with respect to implementing successor arrangements for the Fund and an assessment of the progress of the Government of Iraq in preparing for such arrangements.

2. The issues covered in the present report were discussed at the recent meeting of the International Advisory and Monitoring Board held in Amman, on 14 and 15 October 2010, and reflect activities with regard to both the Advisory Board and the Development Fund that have taken place since my second report of 6 July 2010 (S/2010/359).

II. Major developments

A. Recent activities with regard to the Development Fund for Iraq and the International Advisory and Monitoring Board

3. At the meeting held in Amman, the external audit firm, KPMG, briefed the Advisory Board on the final results of the 2009 audit. The finalization of the 2009 audit took some time due to delay in fieldwork, which was caused, among other things, by bombings that affected a number of ministries during 2010. The final reports and management letters are available on the Advisory Board's website.

4. At its previous meeting, the Advisory Board approved the audit appointment process and concurred with the recommendation of the Government of Iraq to appoint PricewaterhouseCoopers to conduct the 2010 audit of the Development Fund, including an interim review of the period from 1 January 2010 to 30 June 2010.

5. The Advisory Board considered the preliminary results of the audit of the Development Fund for the period from 1 January 2010 to 30 June 2010, and was briefed by PricewaterhouseCoopers on the results of their work for the same period. A summary of the results is available on the Advisory Board's website.

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6. At the request of the Advisory Board, the scope of work for the 2010 interim audit had been expanded to include a review of the installation of a comprehensive oil-metering system. I note from the interim audit that the implementation of the plan is behind schedule and encourage the Government of Iraq to make every effort to implement the metering plan on schedule, as envisaged in the time-bound action plan presented by the Government of Iraq to the Security Council.

7. The Advisory Board was briefed by the representative of the Committee of Financial Experts on actions taken to enhance the transparency and accountability of the Development Fund, taking into account the earlier external audit findings. That briefing is published on the websites of both the Advisory Board and the Committee.

8. I welcome the fact that the Committee of Financial Experts continues to meet monthly, and, in conjunction with the Board of Supreme Audit, performs detailed follow-up and investigation of recommendations contained in the independent audit reports commissioned by the Advisory Board. In addition, I welcome the fact that a number of audit recommendations have been implemented while the outstanding findings are being closely followed up.

9. Representatives of the Office of the Special Inspector General for Iraq Reconstruction of the United States were invited to the meeting of the Advisory Board and briefed the Board on their recent report of the relevance to the Development Fund. The Board noted that the findings of the Special Inspector General echoed those raised by the Board during 2004-2006, and concluded that there was an urgent need for expeditious implementation of the recommendations of the Special Inspector General.

10. In July 2010, the Controller of the United Nations, Mr. Jun Yamazaki, my designated representative on the Advisory Board, briefed the Security Council on the activities of the Development Fund and the Advisory Board.

11. The next meeting of the Advisory Board, with the participation of the representative of the Committee of Financial Experts, is tentatively scheduled for January 2011.

B. Assessment of the progress of the Government of Iraq in preparing for the successor arrangements for the Development Fund for Iraq

12. In paragraph 4 of Security Council resolution 1905 (2009), the Security Council called upon the Government of Iraq to put in place the necessary action plan and timeline by 1 April 2010 and to ensure the timely and effective transition to a post-Development Fund mechanism by 31 December 2010, that takes into account the standby arrangement requirements of the International Monetary Fund, includes external auditing arrangements and enables Iraq to meet its obligations as established in the provisions of paragraph 21 of Council resolution 1483 (2003).

13. I welcome the third quarterly report of the Government of Iraq to the Security Council pursuant to Security Council resolution 1905 (2009).

14. In its third quarterly report (S/2010/567), the Government of Iraq proposes that

> Immunity for the Development Fund for Iraq should be extended for a further year, ... taking into consideration current conditions in Iraq; the fact that political blocs and entities in Iraq have, as of the time of writing, yet to reach

agreement over the formation of a new Government after the elections that were held on 7 March 2010, which has, in one way or another, affected the ability of Government institutions to promptly and comprehensively implement and meet requirements for the timeline for transition to successor arrangements for the Development Fund for Iraq and the International Advisory and Monitoring Board for Iraq.

In my report S/2010/166 of 1 April 2010, I elaborated, inter alia, on the legal issues relating to the privileges and immunities of the Development Fund for Iraq. In the light of the foregoing, it is for the Council to assess the proposal of the Government of Iraq and its implications of the circumstances described therein.

15. With regard to the outstanding activities under the oil-for-food programme, of the 3,009 letters of credit with an approximate value of $8 billion referenced in the note attached to my letter of 1 May 2009 to the President of the Security Council (S/2009/230), only 63 letters of credit are still outstanding, as at 30 September 2010, with an approximate value of $112 million. As detailed in the note accompanying my letter to the President of the Security Council (S/2007/725), beyond the letters of credit still outstanding as described above, the Secretariat had identified certain beneficiaries who had made claims of delivery prior to the expiry of the letter of credit and whose letters of credit had been cancelled. As mentioned in the note attached to my letter of 1 May 2009 to the President of the Security Council, I believe that, whatever option the Security Council may select for concluding all outstanding issues under the oil-for-food programme, these letters of credit should be treated in the same manner as the 63 letters of credit still outstanding. Therefore, the total number of letters of credit with outstanding claims of delivery as at 30 September 2010 would amount to 66 letters of credit.

16. The Council of Ministers of Iraq has established the ministerial committee to review all of the outstanding letters of credit.

17. In this respect, I wish to recall that on 12 July 2010, in its second briefing to the Security Council pursuant to Security Council resolution 1905 (2009), the Government of Iraq, represented by the head of the Committee of Financial Experts, expressed its readiness to pay 26 outstanding letters of credit under the oil-for-food programme.

18. Separately, on 8 September 2010, the Secretariat received the confirmation that the Government of Iraq is willing to pay an additional six (6) outstanding letters of credit under the oil-for-food programme, resulting in thirty-two (32) letters of credit to be paid.

19. The processing of six (6) out of the thirty-two (32) letters of credit mentioned in paragraph 18 above has been completed as at 30 September 2010. With regard to the remaining twenty-six (26) letters of credit, I am pleased to note that the Government of Iraq has provided the Secretariat with the requisite authentication documents for twenty-three (23) letters of credit.

20. Absent the receipt by the Secretariat of the requisite confirmations of arrival of the remaining letters of credit outside the thirty-two (32) mentioned in paragraph 18 above, the Security Council may wish to consider cancelling those remaining letters of credit that have outstanding claims of delivery.

21. Irrespective of the manner selected by the Security Council for the closing of the oil-for-food programme, the conclusion of all issues outstanding should be subject to the provision by the Government of Iraq of a comprehensive indemnity with regard to all activities of the Organization, its representatives and agents in connection with the programme since its inception and with regard to the funds that have been transferred and will be transferred to the Development Fund for Iraq. I would like to recall that the conclusion of the outstanding activities under the programme should also be subject to the availability of sufficient funds for the Organization to meet the costs and expenses that have been incurred or may be incurred in future in connection with the programme, including the costs and expenses associated with the winding-down of the programme and the costs and expenses arising from the cooperation of the Organization with Member States in respect of investigations and proceedings related to the programme.

22. I would like to conclude by expressing my appreciation to the Government of Iraq for its efforts to implement the action plan as presented in the first report to the Security Council, while also noting the position of the Government of Iraq referred to in paragraph 14 above.